

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
IP-Enabled Services) WC Docket No. 04-36
)

REPORT AND ORDER

Adopted: May 13, 2009

Released: May 13, 2009

By the Commission: Acting Chairman Copps and Commissioners Adelstein and McDowell issuing separate statements.

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I. INTRODUCTION

1. Today’s telecommunications marketplace is one of rapidly changing technology, capability, and services. Since the Commission first described Internet Protocol (IP)-enabled services over five years ago, the American public has embraced them, resulting in the widespread adoption of mass market interconnected Voice over Internet Protocol (VoIP) and broadband services by millions of consumers for voice, video, and Internet communications. The rapid growth and ubiquity of these services raise important consumer protection issues for millions of Americans.

2. Consumers increasingly use interconnected VoIP service as a replacement for traditional voice service, and as interconnected VoIP service improves and proliferates, consumers’ expectations for

this type of service trend toward their expectations for other telephone services.¹ Thus, in this Report and Order (Order), we take steps to protect consumers of interconnected VoIP service from the abrupt discontinuance, reduction, or impairment of their service without notice.² Specifically, we extend to providers of interconnected VoIP service the discontinuance obligations that apply to domestic non-dominant telecommunications carriers under section 214 of the Communications Act of 1934, as amended (the Act). Consequently, before an interconnected VoIP provider may discontinue service, it must comply with the streamlined discontinuance requirements under Part 63 of the Commission's rules, including the requirements to provide written notice to all affected customers, notify relevant state authorities, and file an application for authorization of the planned discontinuance with the Commission.

3. It is important to note that we do not impose any economic regulation on providers of interconnected VoIP service by our actions today. Title II and the Commission's rules subject all common carriers to a variety of *non-economic* regulations designed to further important public policy goals and protect consumers,³ and the Commission has stated previously that it "will not hesitate to adopt any non-economic regulatory obligations that are necessary to ensure consumer protection and network security and reliability in this dynamically changing broadband era."⁴ Included among these are the

¹ See, e.g., U.S. VoIP Research Service, TeleGeography Research, at 2 (noting that the United States had 11.8 million VoIP subscribers in mid-2007), available at http://www.telegeography.com/products/voip/pdf/USVoIP_Exec_Summ.pdf (last visited May 13, 2009); JR, *US has overtaken Japan in retail VoIP subscriber numbers*, available at http://www.ilocus.com/2008/03/us_has_overtaken_japan_in_reta.html (last visited May 13, 2009) (noting that the United States had 16.1 million retail VoIP subscribers as of the fourth quarter of 2007).

² The Commission's rules define "interconnected VoIP service" as "a service that: (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment (CPE); and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network." 47 C.F.R. § 9.3; see also *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36, 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10257-58, para. 24 (2005) (*VoIP 911 Order*), *aff'd*, *Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006); 47 C.F.R. § 54.5 (defining "interconnected VoIP provider").

³ *Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) from Application of Computer Inquiry Rules and Certain Title II Common-Carriage Requirements, Petition of the Frontier and Citizens ILECs for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services*, WC Docket No. 06-147, Memorandum Opinion and Order, 22 FCC Rcd 19478, 19481, para. 5 (2007) (*Embarq and Frontier/Citizens Enterprise Broadband Forbearance Order*) (emphasis added), *pet. for review pending*, No. 07-1442 (D.C. Cir. filed Nov. 5, 2007).

⁴ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review — Review of Computer III and ONA Safeguards and Requirements; Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided via Fiber to the Premises; Consumer Protection in the Broadband Era*, WC Docket No. 04-242, 05-271, CC Docket Nos. 95-20, 98-10, 01-337, 02-33, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14915, para. 111 (2005) (*WBIAS Order or Broadband Consumer Protection NPRM*), *petitions for review denied*, *Time Warner Telecom, Inc. v. FCC*, 507 F.3d 205 (3d Cir. 2007).

obligations we impose today on providers of interconnected VoIP service, which serve as important consumer protection measures.⁵

II. BACKGROUND

A. IP-Enabled Services Rulemaking

4. On March 10, 2004, the Commission initiated a rulemaking proceeding to examine issues relating to IP-enabled services – services and applications making use of IP, including, but not limited to, VoIP services.⁶ In the *IP-Enabled Services Notice*, the Commission sought comment on numerous issues, including whether to extend certain consumer protection obligations, such as the discontinuance obligations of section 214, to any class of IP-enabled service provider.⁷

5. The Commission has resolved many of the issues raised in the *IP-Enabled Services Notice*. Most relevant here, the Commission has extended a number of consumer protection and public safety requirements to interconnected VoIP service. For example, in 2005, the Commission asserted its ancillary jurisdiction under Title I of the Act, and its authority under section 251(e), to require interconnected VoIP providers to supply 911 emergency calling capabilities to their customers.⁸ In 2006, in the *2006 Interim Contribution Methodology Order*, the Commission established universal service contribution obligations for interconnected VoIP providers based on the permissive authority of section 254(d) and its ancillary jurisdiction under Title I of the Act.⁹ In 2007, the Commission extended the customer privacy requirements of section 222 to interconnected VoIP providers using Title I authority.¹⁰ Also in 2007, the Commission used its Title I authority to extend the section 255 disability access obligations to providers of interconnected VoIP services and to manufacturers of specially designed equipment used to provide these services.¹¹ The Commission also extended the Telecommunications Relay Services (TRS) requirements to providers of interconnected VoIP services, pursuant to section 225(b)(1) of the Act and its Title I jurisdiction, thus requiring interconnected VoIP providers to contribute to the Interstate TRS Fund under the Commission's existing contribution rules, and to offer 711

⁵ Compare, e.g., *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4910, para. 72 (2004) (*IP-Enabled Services Notice*) (seeking comment on a number of consumer protections set forth in the Act, including section 214 separately) with *id.* at 4911-12, para. 73 (seeking comment on whether various traditional *economic* regulations set forth in Title II should be applied to any class of IP-enabled service provider).

⁶ See *IP-Enabled Services Notice*, 19 FCC Rcd 4863.

⁷ *IP-Enabled Services Notice*, 19 FCC Rcd at 4910-11, paras. 71-72.

⁸ See *VoIP 911 Order*, 20 FCC Rcd at 10246, para. 1.

⁹ See *Universal Service Contribution Methodology*, WC Docket No. 06-122; CC Docket Nos. 96-45, 98-171, 90-571, 92-237; NSD File No. L-00-72; CC Docket Nos. 99-200, 95-116, 98-170; WC Docket No. 04-36, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7538-43, paras. 38-49 (2006) (*2006 Interim Contribution Methodology Order*), *aff'd in part, vacated in part sub nom. Vonage Holdings Corp. v. FCC*, 489 F.3d 1232, 1244 (D.C. Cir. 2007).

¹⁰ See *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, CC Docket No. 96-115, WC Docket No. 04-36, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, 6954-57, paras. 54-59 (2007) (*CPNI Order*), *pet. for review pending sub nom. National Cable & Telecomms. Ass'n v. FCC* (D.C. Cir. No. 07-1312).

¹¹ See *IP-Enabled Services*, WC Docket No. 04-36, WT Docket No. 96-198, CG Docket No. 03-123, CC Docket No. 92-105, Report and Order, 22 FCC Rcd 11275, 11283-291, paras. 17-31 (2007) (*TRS Order*).

abbreviated dialing for access to relay services.¹² Additionally in 2007, the Commission extended local number portability (LNP) obligations and numbering administration support obligations to interconnected VoIP providers and their numbering partners pursuant to sections 251(e) and 251(b)(2) of the Act and Title I authority.¹³

B. Section 214 Discontinuance Requirements

6. Section 214(a) of the Act requires common carriers to obtain Commission authorization before discontinuing, reducing, or impairing service to a community.¹⁴ Under Part 63 of its rules, the Commission has adopted specific requirements that clarify this duty and ensure that customers of domestic telecommunications services receive adequate notice of a carrier's discontinuance plans and have an opportunity to inform the Commission of any resultant hardships.¹⁵ In particular, before discontinuing service, a telecommunications carrier generally must notify all affected customers of its proposed discontinuances. Notice to customers must include the name and address of the carrier, the date of the planned service discontinuance, the geographic areas where service will be discontinued, and a brief description of the type of service affected. In addition, notice must include a prescribed statement that informs customers of their right to object to the proposed discontinuance of the dominant or non-dominant carrier by filing comments either 30 or 15 days, respectively, after the Commission releases public notice of the proposed discontinuance.¹⁶ The prescribed statement also informs customers that the Commission normally will authorize the proposed discontinuance "unless it is shown that customers

¹² See *id.* at 11291-97, paras. 32-43. TRS, created by Title IV of the Americans with Disabilities Act of 1990 (ADA), enables a person with a hearing or speech disability to access the nation's telephone system to communicate with voice telephone users through a relay provider and a Communications Assistant. See 47 U.S.C. § 225(a)(3); see also 47 C.F.R. § 64.601(14) (defining TRS).

¹³ See *Telephone Number Requirements for IP-Enabled Services Providers; Local Number Portability Porting Interval and Validation Requirements; IP-Enabled Services; Telephone Number Portability; Numbering Resource Optimization*, WC Docket Nos. 07-243, 07-244, 04-36, CC Docket Nos. 95-116, 99-200, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531 (2007) (*VoIP LNP Order*), *pet. for review pending sub nom. National Telecomms. Cooperative Ass'n v. FCC* (D.C. Cir. No. 08-1071). In addition, in 2005 the Commission determined that providers of interconnected VoIP services and broadband Internet access services are subject to the Communications Assistance for Law Enforcement Act (CALEA). See *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, RM-10865, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 14989, 14991-92, para. 8 (2005) (*CALEA First Report and Order*), *aff'd sub nom. American Council on Educ. v. FCC*, 451 F.3d 226 (D.C. Cir. 2006). In addition, starting in fiscal year 2007, the Commission, under its Title I ancillary jurisdiction, has required interconnected VoIP providers to pay regulatory fees based on revenues reported on the FCC Form 499-A at the same rate as interstate telecommunications service providers. See *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, MD Docket No. 07-81, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15712, 15716-17, paras. 11-13 (2007).

¹⁴ 47 U.S.C. § 214(a).

¹⁵ See 47 C.F.R. §§ 63.60 *et seq.*; see also *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, First Report and Order, 85 FCC 2d 1 (1980) (*Competitive Carrier First Report and Order*); *Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996, Petition for Forbearance of the Independent Telephone & Telecommunications Alliance*, CC Docket No. 97-11, AAD File No. 98-43, Report and Order in CC Docket No. 97-11, Second Memorandum Opinion and Order in AAD File No. 98-43, 14 FCC Rcd 11364 (1999); *Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau*, WC Docket No. 02-313, 21 FCC Rcd 9937 (2006). The Commission also has adopted requirements for the discontinuance of international telecommunications services. See 47 C.F.R. §§ 63.09 *et seq.* The scope of the present order is limited to the Commission's domestic service rules.

¹⁶ 47 C.F.R. § 63.71(a).

would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected.”¹⁷

7. After a carrier has given the prescribed notice to all of its affected customers, it must submit a discontinuance application to the Commission.¹⁸ In addition to the information provided in the notice to affected customers, each application must contain: (1) a brief description of the dates and methods of notice to all affected customers; (2) a statement as to whether the carrier is considered dominant or non-dominant with respect to the service to be discontinued, reduced, or impaired; and (3) any other information the Commission may require.¹⁹ Carriers also must notify and submit a copy of the discontinuance application to the public utility commission and Governor of each state in which the discontinuance is proposed, and also to the Secretary of Defense. Unless the Commission notifies the carrier otherwise, discontinuance applications for dominant and non-dominant carriers will be automatically granted by the Commission on the 60th and 31st day after public notice of the application, respectively.²⁰

III. DISCUSSION

A. Scope

8. The exit certification requirements we adopt in this Order apply to interconnected VoIP service and providers of such service.²¹ As the Commission has found before, unlike certain other IP-

¹⁷ See *id.*

¹⁸ See 47 C.F.R. § 63.71(b).

¹⁹ See *id.*

²⁰ 47 C.F.R. § 63.71(c).

²¹ “Interconnected VoIP service” and “interconnected VoIP provider” are defined *supra* at note 2. The Commission to date has not classified interconnected VoIP service as a telecommunications service or information service as those terms are defined in the Act, and we do not make that determination today. See 47 U.S.C. § 153(20), (46) (defining “information service” and “telecommunications service”). In general, providers of facilities-based interconnected VoIP services and “over-the-top” interconnected VoIP services are subject to the rules in this Order. See *AT&T Inc. and BellSouth Corporation, Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5712, para. 92 n.266 (2007) (defining “facilities-based” and “over-the-top” interconnected VoIP service providers). We do not at this time, however, extend section 214 requirements to providers of interconnected VoIP services that are “mobile services” under the Act. See 47 U.S.C. § 3(27); 47 C.F.R. § 20.3. If anything, these services would be more akin to Commercial Mobile Radio Service (CMRS) than to traditional wireline services. Therefore, for purposes of the rules at issue here, we believe it makes more sense to treat providers of interconnected VoIP services that are mobile the same way that we treat CMRS providers, which are not subject to the Commission’s section 214 discontinuance obligations. See 47 C.F.R. § 20.15(b)(3); *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1480-81, para. 182 (1994) (forbearing under section 332(c)(1)(A) from requiring CMRS providers to comply with the domestic market entry and market exit requirements of section 214). The Commission may revisit this issue if circumstances warrant, and in other contexts may decline to exempt these services from rules that apply to interconnected VoIP services generally. See, e.g., *IP-Enabled Services; Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, WC Docket No. 04-36, WT Docket No. 96-198, CG Docket No. 03-123 & CC Docket No. 92-105, Order, 23 FCC Rcd 5707, 5715, para. 13 n.47 (CGB Apr. 4, 2008) (*2008 TRS 711 Waiver Order*) (declining to grant “wireless interconnected VoIP services” a one-year extension of the deadline for complying with the Commission’s TRS rules).

enabled services, interconnected VoIP service increasingly is used as a replacement for traditional voice service.²² Indeed, as interconnected VoIP service improves and proliferates, consumers' expectations for this type of service trend toward their expectations for other telephone services. Customers therefore reasonably expect their interconnected VoIP service to include the regulatory protections that they would receive with traditional voice services.²³ We believe it is critically important that all customers of interconnected VoIP service receive the protections of the section 214 discontinuance requirements.²⁴ Importantly, if customers were to lose their telephone service without sufficient notice, they would also lose access to 911 service – possibly with disastrous consequences. Our action today therefore is consistent with, and a necessary extension of, the Commission's prior exercises of authority to ensure public safety.

B. Section 214 Discontinuance

9. *Authority.* We conclude that the Commission has authority under Title I of the Act to impose section 214 discontinuance obligations on providers of interconnected VoIP services.²⁵ Ancillary jurisdiction may be employed, at the Commission's discretion, when Title I of the Act gives the Commission subject matter jurisdiction over the service to be regulated²⁶ and the assertion of jurisdiction

²² See *VoIP LNP Order*, 22 FCC Rcd at 19540-41, para. 18; see also *CPNI Order*, 22 FCC Rcd at 6956, para. 56; *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7541, para. 44; *VoIP 911 Order*, 20 FCC Rcd at 10256, para. 23.

²³ See, e.g., *VoIP 911 Order*, 20 FCC Rcd at 10256, para. 23 (explaining that if a VoIP customer is able to make calls to and receive calls from other interconnected VoIP service users and traditional telephone service subscribers, interconnected VoIP customers reasonably can expect to be able to dial 911 using the same service to access appropriate emergency services); *CPNI Order*, 22 FCC Rcd at 6956, para. 56 (finding it is "reasonable for American consumers to expect that their telephone calls are private irrespective of whether the call is made using the services of a wireline carrier, a wireless carrier, or an interconnected VoIP provider"); *VoIP LNP Order*, 22 FCC Rcd at 19540-41, para. 18 (similar).

²⁴ We clarify that we extend the Commission's section 214 discontinuance rules to all interconnected VoIP providers, and not simply those that own or control their own facilities. See, e.g., *supra* note 21. All telephone service customers deserve notice before their service is discontinued, and we reject arguments for a limited application of section 214 discontinuance requirements, such as only to entities that own or control the facilities used to provide interconnected VoIP service. See Covad Comments at 31; Pac-West Comments at 26, 28. All comments in this Order are in WC Docket No. 04-36 unless otherwise noted.

²⁵ See 47 U.S.C. §§ 151, 152.

²⁶ See *United States v. Southwestern Cable Co.*, 392 U.S. 157, 177-78 (1968) (*Southwestern Cable*). *Southwestern Cable*, the lead case on the ancillary jurisdiction doctrine, upheld certain regulations applied to cable television systems at a time before the Commission had an express congressional grant of regulatory authority over that medium. See *id.* at 170-71. In *Midwest Video I*, the Supreme Court expanded upon its holding in *Southwestern Cable*. The plurality stated that "the critical question in this case is whether the Commission has reasonably determined that its origination rule will 'further the achievement of long-established regulatory goals in the field of television broadcasting by increasing the number of outlets for community self-expression and augmenting the public's choice of programs and types of services.'" *United States v. Midwest Video Corp.*, 406 U.S. 649, 667-68 (1972) (*Midwest Video I*) (quoting *Amendment of Part 74, Subpart K, of the Commission's Rules and Regulations Relative to Community Antenna Television Systems; and Inquiry into the Development of Communications Technology and Services to Formulate Regulatory Policy and Rulemaking and/or Legislative Proposals*, Docket No. 18397, First Report and Order, 20 FCC 2d 201, 202 (1969) (*CATV First Report and Order*)). The Court later restricted the scope of *Midwest Video I* by finding that if the basis for jurisdiction over cable is that the authority is ancillary to the regulation of broadcasting, the cable regulation cannot be antithetical to a basic regulatory parameter established for broadcast. See *FCC v. Midwest Video Corp.*, 440 U.S. 689, 700 (1979) (*Midwest Video II*); see also *American Library Ass'n v. FCC*, 406 F.3d 689 (D.C. Cir. 2005) (holding that the Commission lacked authority to impose broadcast content redistribution rules on equipment manufacturers using ancillary jurisdiction because the (continued....)

is “reasonably ancillary to the effective performance of [its] various responsibilities.”²⁷ Both predicates for ancillary jurisdiction are satisfied here.

10. First, as the Commission previously has concluded, interconnected VoIP service falls within the subject matter jurisdiction granted to the Commission under the Act.²⁸ Second, our analysis requires us to evaluate whether imposing service discontinuance obligations on interconnected VoIP providers is reasonably ancillary to the effective performance of the Commission’s responsibilities.²⁹ As discussed further below, we find that sections 1 and 214 of the Act provide the requisite nexus, with additional support from section 706.³⁰ Specifically, we find that extending the section 214 discontinuance procedures to interconnected VoIP service providers is “reasonably ancillary to the effective performance of [our] responsibilities”³¹ under these statutory provisions, and “will ‘further the achievement of long-established regulatory goals’”³² to ensure that the public is not adversely affected by the discontinuance, reduction, or impairment of service.³³

11. We find that extending the Commission’s domestic discontinuance requirements to interconnected VoIP providers is reasonably ancillary to the Commission’s effective performance of its responsibility to promote safety of life and property through the use of wire and radio communication.³⁴ Section 1 of the Act charges the Commission with responsibility for making available “a rapid, efficient, Nation-wide, and world-wide wire and radio communication service . . . for the purpose of *promoting safety of life and property* through the use of wire and radio communication.”³⁵ By extending the section 214 discontinuance procedures to interconnected VoIP providers, the Commission protects American consumers from the unanticipated and harmful consequences that could follow the loss of telephone

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equipment at issue was not subject to the Commission’s subject matter jurisdiction over wire and radio communications).

²⁷ *Southwestern Cable*, 392 U.S. at 178.

²⁸ See, e.g., *VoIP LNP Order*, 22 FCC Rcd at 19544-48, paras. 24-29; *EPIC CPNI Order*, 22 FCC Rcd at 6955-56, para. 55; *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7542, para. 47; *VoIP 911 Order*, 20 FCC Rcd at 10261-62, para. 28 (“[I]nterconnected VoIP services are covered by the statutory definitions of ‘wire communication’ and/or ‘radio communication’ because they involve ‘transmission of [voice] by aid of wire, cable, or other like connection . . .’ and/or ‘transmission by radio . . .’ of voice. Therefore, these services come within the scope of the Commission’s subject matter jurisdiction granted in section 2(a) of the Act.”).

²⁹ *Southwestern Cable*, 392 U.S. at 178.

³⁰ See also SBC Comments at 127; cf. TWTC Comments at 32-33.

³¹ *Southwestern Cable*, 392 U.S. at 178.

³² *Midwest Video I*, 406 U.S. at 667-68 (quoting *CATV First Report and Order*, 20 FCC 2d at 202).

³³ See 47 U.S.C. § 214; see also, e.g., *Competitive Carrier First Report and Order*, 85 FCC 2d at 28, para. 118 (“[S]ection 214 is a broad mandate delegated to the Commission by Congress to allow the development of the telecommunications industry in a way likely to achieve the purpose of the Act as specified in 47 U.S.C. § 151.”). We disagree with TWTC’s suggestion that application of our ancillary jurisdiction would not be advisable given the possible classification of interconnected VoIP service as something other than a telecommunications service. See TWTC Comments at 33-36. As explained above, the actions we take in this order are fully justified, regardless of the regulatory classification of interconnected VoIP service. See *supra* para. 8; *supra* note 21 (stating that the present order does not classify interconnected VoIP service as a telecommunications service or an information service).

³⁴ See SBC Comments at 126-127; see also 47 U.S.C. § 214.

³⁵ 47 U.S.C. § 151 (emphasis added).

service without sufficient notice.³⁶ Most notably, as mentioned above, if an interconnected VoIP provider discontinued service without notice, customers would lose the ability to call 911 through that service. In addition, extending the section 214 discontinuance rules to interconnected VoIP providers ensures customers' ability to transition to alternative service providers in an orderly fashion. The Commission thereby fosters "rapid, efficient, Nation-wide, and world-wide wire and radio communication service" by safeguarding the public interest in continuity of such services – irrespective of which provider makes those services available.³⁷

12. Section 214(a) of the Act states that "[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby."³⁸ The primary purpose of this requirement is to reduce the harm to consumers caused by discontinuances of service. We find that the extension of section 214 service discontinuance requirements to providers of interconnected VoIP service is reasonably ancillary to the effective performance of the Commission's duty to protect the public from the adverse effects of service discontinuances.³⁹ The Commission already has found that interconnected VoIP service "is increasingly used to replace analog voice service" – a trend that we expect will continue.⁴⁰ From the perspective of a customer making an ordinary telephone call, we believe that interconnected VoIP service is functionally indistinguishable from traditional telephone service. It therefore is reasonable for American consumers to have similar expectations for these services.⁴¹ In particular, we find it reasonable for customers of interconnected VoIP service to expect some advance notice before the discontinuance of their voice service, and note that customers receiving traditional telephone service from wireline carriers are already entitled to such notice under the Commission's discontinuance requirements. By extending the Commission's discontinuance requirements to interconnected VoIP services, we advance the public interest by helping ensure that such notice actually is given to customers that are making and receiving calls regardless of whether they are receiving service from a traditional carrier or an interconnected VoIP provider.

13. We also are guided by section 706 of the 1996 Act, which, among other things, directs the Commission to encourage the deployment of advanced telecommunications capability to all Americans by using measures that "promote competition in the local telecommunications market."⁴² The assurance that providers of interconnected VoIP services are subject to service-discontinuance procedures comparable to those that apply to non-dominant carriers may spur consumer demand for those services, in

³⁶ The House of Representatives found in 2007 that "more than 9 million consumers in the United States use VoIP service as a substitute for traditional telephony." See House Report, 110-442 110th Cong., 1st Sess. at 6 (2007) (summarizing legislation that gives interconnected VoIP providers increased access to the capabilities needed to provide 911 service).

³⁷ 47 U.S.C. § 151.

³⁸ 47 U.S.C. § 214(a); see also 47 U.S.C. § 214(c) (granting the Commission broad authority regarding section 214 certifications).

³⁹ The Supreme Court has determined that the Commission has considerable discretion in deciding how to make its section 214 public interest finding. See *Competitive Carrier First Report and Order*, 85 FCC 2d at 28, para. 119 (citing *FCC v. RCA Communications, Inc.*, 346 U.S. 86, 90 (1953)).

⁴⁰ See *supra* note 22.

⁴¹ See *supra* note 23.

⁴² 47 U.S.C. § 157 nt.

turn driving demand for broadband connections, and consequently encouraging more broadband investment and deployment consistent with the goals of section 706.⁴³

14. *Interconnected VoIP Provider Discontinuance Obligations.* To protect customers from an abrupt discontinuance, reduction, or impairment of service without adequate notice, we require providers of interconnected VoIP service to comply with the same service discontinuance obligations as domestic non-dominant carriers.⁴⁴ We disagree with commenters who assert that such action is unnecessary in light of competitive market conditions.⁴⁵ Service discontinuance can be disruptive to all customers, regardless of whether their provider has market power or utilizes new technology.⁴⁶ As the Commission previously has concluded with respect to other competitive telephone services, even customers with competitive alternatives need fair notice and information to choose a substitute service.⁴⁷ Therefore, in order to protect customers of interconnected VoIP service from interrupted service and its associated consequences, providers of interconnected VoIP service must notify all affected customers of their plans to discontinue, reduce, or impair service, and must provide affected customers with an opportunity to inform the Commission of resultant hardships.⁴⁸

15. By requiring interconnected VoIP providers to comply with the Commission's streamlined domestic discontinuance requirements applicable to non-dominant carriers, we have balanced the need to protect consumers with the goal set forth in section 230 of the Act of minimizing the regulation of the Internet and other interactive computer services.⁴⁹ As the Commission previously has

⁴³ See *Availability of Advanced Telecommunications Capability in the United States*, Fourth Report to Congress, 20 FCC Rcd 20540, 20578 (2004) (“[S]ubscription to broadband services will increase in the future as new applications that require broadband access, such as VoIP, are introduced into the marketplace, and consumers become more aware of such applications.”) (emphasis added); see also *infra* at note 46 (describing how abrupt discontinuance of service by one provider can affect consumer confidence in an entire industry).

⁴⁴ See 47 C.F.R. § 63.71. The Commission's rules pertaining to emergency discontinuances shall also apply to interconnected VoIP services. See 47 C.F.R. § 63.63.

⁴⁵ See AT&T Reply at 28; Comcast Comments at 9-10; Pac-West Comments at 26; Qwest Reply at 6; Verizon Comments at 5-6.

⁴⁶ See, e.g., *Competitive Carrier First Report and Order*, 85 FCC 2d at 34, para. 146; see also Andy Vuong, *No Dial Tone – Internet-based Phone Provider SunRocket's Abrupt Closure Leaves 200,000 Customers Hanging*, DENV. POST, July 20, 2007, at C3 (describing the harm to customers and the interconnected VoIP industry by SunRocket's abrupt discontinuance of service); Matthew Barakat, *VoIP Provider Shuts Down*, AP Newswires 18:58:55, July 18, 2007 (similar).

⁴⁷ See *Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996*, CC Docket No. 97-11, Report and Order, 14 FCC Rcd 11364, 11380, para. 30 (1999); see also, e.g., CWA Comments at 23; Frontier/Citizens Comments at 4-6; Massachusetts Attorney General Reply at 2; New Jersey Ratepayer Advocate Reply at 23; New York Attorney General Comments at 13; Pennsylvania Commission Reply at 8-9; cf. Utah Commission Comments at 6.

⁴⁸ The Commission's rules do not provide an exhaustive list of what constitutes the discontinuance, reduction, or impairment of service. See 47 C.F.R. § 63.60(a) (defining “[d]iscontinuance, reduction, or impairment of service”). In the context of interconnected VoIP service, we find that a discontinuance, reduction, or impairment of service would include, but not be limited to, the conversion of an interconnected VoIP service to one that permits only inbound, but not outbound, calls to the PSTN – or one that permits only outbound, but not inbound, calls to the PSTN.

⁴⁹ We do not believe that our actions today are in conflict or otherwise inconsistent with any other provision of the Act. We acknowledge that section 230 of the Act provides that “[i]t is the policy of the United States – to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.” 47 U.S.C. § 230(b)(2). The Commission's discussion of section 230 in the *Vonage Order* acknowledged this policy and cautioned against the imposition of undue regulation by multiple (continued....)

found, section 63.71 of the Commission's rules strikes a good balance between the Commission's dual objectives of permitting ease of exit from competitive markets and ensuring that the public will be given a reasonable period of time to make other service arrangements.⁵⁰ We therefore disagree with commenters who argue that applying section 214 exit regulations to interconnected VoIP service will unduly deter market entry, distort the market, or depress investment in new technologies.⁵¹ On the contrary, as the Commission has stated previously, disparate treatment of entities providing the same or similar services is not in the public interest as it creates distortions in the marketplace that may harm consumers.⁵²

16. We amend the Commission's Part 63 domestic discontinuance rules to encompass interconnected VoIP service. Accordingly, before an interconnected VoIP provider may discontinue, reduce, or impair service, it must provide all affected customers with written notice⁵³ that includes the provider's name and address; the date of the planned service discontinuance, reduction, or impairment; the geographic areas where service will be affected; a brief description of the affected service; and the statement found in section 63.71(a)(5)(i) of the Commission's rules.⁵⁴ We recognize that because of the

(Continued from previous page) _____
jurisdictions, but was directed at "traditional common carrier economic regulations." *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, 19 FCC Rcd 22404, 22426, para. 35 (2004) (*Vonage Order*); see also *VoIP 911 Order*, 20 FCC Rcd at 10262, n.95; *EPIC CPNI Order*, 22 FCC Rcd at 6957, n.188. We therefore find that our actions here are consistent with the Commission's previous decisions, and we do not believe that the congressional policy statement in section 230 of the Act precludes us from extending consumer protection obligations, like section 214 discontinuance obligations, to interconnected VoIP providers. See *supra* para. 3. We also note that the extension of discontinuance obligations to providers of interconnected VoIP services has no effect on the Commission's preemption determinations in the *Vonage Order*. See Level 3 Comments at v (arguing against unnecessary state regulation in light of the *Vonage Order*). But see Pennsylvania Commission Reply at 9 (stating that the Commission should not preempt state authority over facilities or those services that the Commission may classify as telecommunications or telecommunications service so long as that authority is not too oppressive, overly burdensome, or hampers the development of this technology); Utah Commission Comments at 5-6 (indicating that state regulation of consumer protection issues as they relate to IP-enabled services would be beneficial).

⁵⁰ See *Competitive Carrier First Report and Order*, 85 FCC 2d at 34, para. 147.

⁵¹ See AT&T Comments at 41; DJE Comments at 3 n.9; Verizon Comments at 5-6, 30; Qwest Reply at 6.

⁵² *WBIAS Order*, 20 FCC Rcd at 14865, para. 17 (creating a regulatory and analytical framework that is consistent across different platforms that supports competing services); see also CWA Comments at 24 (arguing that applying the same consumer protection obligations to interconnected VoIP providers ensures competitive neutrality); Frontier/Citizens Comments at 4-6 (consumer protection should be technology neutral). We do not find it necessary to impose different or reduced requirements on interconnected VoIP providers that may be small businesses. Notice of proposed service discontinuances is important for the protection of all interconnected VoIP service customers, including the customers of small businesses. Given the important consumer interests involved, and that the Commission's existing rules apply to traditional carriers that are small businesses and have not resulted in undue hardship to those carriers, we conclude that the imposition of these requirements on interconnected VoIP providers that may be small businesses is similarly appropriate.

⁵³ Typically, written notice by postal mail to the customer's billing address satisfies the Commission's notice requirements under section 63.71 of the Commission's rules.

⁵⁴ "The FCC will normally authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments as soon as possible, but no later than 15 days after the Commission releases public notice of the proposed discontinuance. Address them to the Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, Washington, DC 20554, and include in your comments a reference to the § 63.71 Application of (carrier's name). Comments should include specific information about the impact of this proposed (continued....)

potentially portable nature of some interconnected VoIP services, there may be additional and/or alternative means of providing effective notice to customers of interconnected VoIP providers. As such, upon request, the Commission may authorize in advance another form of notice for good cause shown.⁵⁵

17. On or after the date it provides notice to its customers as specified above, the interconnected VoIP provider must file with the Commission an application for authorization of the planned discontinuance.⁵⁶ The application shall identify that the provider is an interconnected VoIP provider seeking to discontinue, reduce or impair interconnected VoIP services and shall include, in addition to the information set forth in the notice provided to affected customers, a caption, a brief description of the dates and methods of notice to all affected customers, and any other information the Commission may require. An interconnected VoIP provider shall also submit a copy of its application to the public utility commission and to the Governor of the State(s) in which it proposes to discontinue, reduce, or impair service, as well as to the Secretary of Defense.⁵⁷ The application to discontinue, reduce, or impair service shall be automatically granted on the 31st day after the Commission releases public notice of the application unless the Commission notifies the applicant that the grant will not be automatically effective.⁵⁸ Thus we believe that interconnected VoIP providers will be faced with discontinuance requirements that are no more burdensome than the reduced requirements that already apply to competitive carriers, and that their customers will be afforded a reasonable time to make alternative service arrangements in the event of a discontinuance, reduction, or impairment of service.

C. Implementation

18. Some of the rules we adopt in this Order are subject to approval by the Office of Management and Budget (OMB). Thus, while this Order itself will become effective 30 days after

(Continued from previous page) _____
discontinuance (or reduction or impairment) upon you or your company, including any inability to acquire reasonable substitute service.” 47 C.F.R. § 63.71(a)(5)(i).

⁵⁵ See 47 C.F.R. § 63.71(a).

⁵⁶ See *infra* Appendix B (amending section 63.60 to include interconnected VoIP providers under the discontinuance rules including section 63.71).

⁵⁷ In addition to providing existing customers with direct notice of a proposed discontinuance, providers seeking to discontinue, reduce or impair service to a community should copy the state public utility commissions and governors’ offices in the states where they no longer plan to offer services regardless of whether customers are currently subscribing to their service at the time of the application. See 47 U.S.C. § 214(b) (regarding notice to the states where a carrier’s discontinuance, reduction, or impairment of service is proposed). We believe this requirement will serve the public interest by, among other things, better enabling states to play an active role in customer notification efforts where circumstances warrant such involvement. We recognize that interconnected VoIP providers that offer service nationwide will need to notify every state PUC and governor’s office before discontinuing service altogether. We do not find this requirement to be unduly burdensome however. In particular, notice to the states pursuant to section 63.71(a) only requires providing state officials with a copy of the discontinuance application. We find this simple notice should adequately inform states of the impending loss of previously available services to their communities in a minimally burdensome manner – using the same procedures that apply to other non-dominant providers that plan to discontinue nationwide offerings. See, e.g., *Comments Invited on Application of MCI Communications Services, Inc. (Verizon) to Discontinue Domestic Telecommunications Services*, Public Notice, WC Docket No. 08-64, 23 FCC Red 7691 (2008) (discontinuing prepaid calling card service and providing an easily updated service list for copies to all 50 states, the District of Columbia and Puerto Rico).

⁵⁸ 47 C.F.R. § 63.71(c). We expect that providers of wholesale inputs will coordinate and continue to work with interconnected VoIP providers in the event that a discontinuance of service becomes necessary so that the discontinuance of service can occur in an orderly fashion consistent with this Order, the Commission’s rules, and the interest of customers.

publication in the Federal Register, the requirements herein to provide notice to customers, to file an application with the Commission, and to provide information to other governmental entities will not become effective until receipt of OMB approval, as required by the Paperwork Reduction Act.

IV. PROCEDURAL MATTERS

A. Regulatory Flexibility

19. As required by the Regulatory Flexibility Act, 5 U.S.C. § 604, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this Report and Order. The FRFA is set forth in Appendix C.

B. Paperwork Reduction Act

20. This Order contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we previously sought specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

21. In this Order, the Commission has assessed the effects of imposing section 214 service discontinuance obligations on interconnected VoIP providers, and finds that the information collection burden of doing so in regards to small business concerns will be minimal. Thus, we do not adopt a varied implementation schedule for these requirements.

C. Congressional Review Act

22. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA).⁵⁹

D. Accessible Formats

23. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice) or 202-418-0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov; phone: 202-418-0530 or TTY: 202-418-0432.

V. ORDERING CLAUSES

24. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j), 214, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-(j), 214, 303(r), that the Report and Order in WC Docket No. 04-36 IS ADOPTED and Part 63 of the Commission’s rules, 47 C.F.R. Part 63, IS AMENDED as set forth in Appendix B.

25. IT IS FURTHER ORDERED that, pursuant to sections 1.103(a) and 1.427(a) of the Commission’s rules, 47 C.F.R. §§ 1.103(a), 1.427(a), that this Report and Order SHALL BE EFFECTIVE 30 days after the publication of the Report and Order in the Federal Register. However, the

⁵⁹ See 5 U.S.C. § 801(a)(1)(A).

information collection requirements contained in the Report and Order will become effective following Office of Management and Budget (OMB) approval.

26. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

List of Commenters

<u>Comments</u>	<u>Abbreviation</u>
8X8, Inc.	8X8
AARP	AARP
ACN Communications Services, Inc.	ACN
Ad Hoc Telecommunications Users Committee	Ad Hoc
Alcatel North America	Alcatel
Alliance for Public Technology	APT
America's Rural Consortium	ARC
American Foundation for the Blind	AFB
American Public Communications Council	APCC
Amherst, Massachusetts Cable Advisory Committee	Amherst CAC
Arizona Corporation Commission	Arizona Commission
Arctic Slope Telephone Association Cooperative, Inc. Cellular Mobile Systems of St. Cloud, LLC d/b/a Cellular 2000 Comanche County Telephone, Inc. DeKalb Telephone Cooperative, Inc. d/b/a DTC Communications Grand River Mutual Telephone Corporation Interstate 35 Telephone Company KanOkla Telephone Association, Inc. Siskiyou Telephone Company Uintah Basin Telecommunications Association, Inc. Vermont Telephone Company, Inc. Wheat State Telephone, Inc.	Arctic Slope <i>et al.</i>
Association for Communications Technology Professionals in Higher Education	ACUTA
Association for Local Telecommunications Services	ALTS
Association of Public-Safety Communications Officials- International, Inc.	APCO
AT&T Corporation	AT&T
Attorney General of the State of New York	New York Attorney General
Avaya, Inc.	Avaya
BellSouth Corporation	BellSouth
Bend Broadband Cebriidge Connections, Inc. Insight Communications Company, Inc. Susquehanna Communication	Bend Broadband <i>et al.</i>
Boulder Regional Emergency Telephone Service Authority	BRETSA
BT Americas Inc.	BTA
Cablevision Systems Corp.	Cablevision
Callipso Corporation	Callipso
Cbeyond Communications, LLC GlobalCom, Inc.	Cbeyond <i>et al.</i>

MPower Communications, Corp.	
CenturyTel, Inc.	CenturyTel
Charter Communications	Charter
Cheyenne River Sioux Tribe Telephone Authority	Cheyenne Telephone Authority
Cisco Systems, Inc.	Cisco
Citizens Utility Board	CUB
City and County of San Francisco	San Francisco
City of New York	New York City
Comcast Corporation	Comcast
Communication Service for the Deaf, Inc.	CSD
Communications Workers of America	CWA
CompTel/ASCENT	CompTel
Computer & Communications Industry Association	CCIA
Computing Technology Industry Association	CompTIA
Consumer Electronics Association	CEA
Covad Communications	Covad
Cox Communications, Inc.	Cox
CTIA-The Wireless Association	CTIA
Department of Homeland Security	DHS
DialPad Communication, Inc. ICG Communications, Inc. Qovia, Inc. VoicePulse, Inc.	Dialpad <i>et al.</i>
DJE Teleconsulting, LLC	DJE
Donald Clark Jackson	Jackson
EarthLink, Inc.	EarthLink
EDUCAUSE	EDUCAUSE
Electronic Frontier Foundation	EFF
Enterprise Communications Association	ECA
Federation for Economically Rational Utility Policy	FERUP
Francois D. Menard	Menard
Frontier and Citizens Telephone Companies	Frontier/Citizens
General Communications, Inc.	GCI
Global Crossing North America, Inc.	Global Crossing
GVNW Consulting, Inc.	GVNW
ICORE, Inc.	ICORE
IEEE-USA	IEEE-USA
Illinois Commerce Commission	Illinois Commerce Commission
Inclusive Technologies	Inclusive Technologies
Independent Telephone & Telecommunications Alliance	ITTA
Information Technology Association of America	ITAA
Information Technology Industry Council	ITIC
Interstate Telcom Consulting, Inc.	ITCI
Ionary Consulting	Ionary
Iowa Utilities Board	Iowa Commission
King County E911 Program	King County
Level 3 Communications LLC	Level 3
Lucent Technologies Inc.	Lucent Technologies
Maine Public Utilities Commissioners	Maine Commissioners

MCI	MCI
Microsoft Corporation	Microsoft
Minnesota Public Utilities Commission	Minnesota Commission
Montana Public Service Commission	Montana Commission
Motorola, Inc.	Motorola
National Association of Regulatory Utility Commission	NARUC
National Association of State Utility Consumer Advocates	NASUCA
National Association of Telecommunications Officers and Advisors National League of Cities National Association of Counties U.S. Conference of Mayors National Association of Towns and Townships Texas Coalition of Cities for Utility Issues Washington Association of Telecommunications Officers and Advisors Greater Metro Telecommunications Consortium Mr. Hood Cable Regulatory Commission Metropolitan Washington Council of Governments Rainier Communications Commission City of Philadelphia City of Tacoma, Washington Montgomery County, Maryland	NATOA <i>et al.</i>
National Cable & Telecommunications Association	NCTA
National Consumers League	NCL
National Emergency Number Association	NENA
National Exchange Carrier Association, Inc.	NECA
National Governors Association	NGA
National Grange	National Grange
National Telecommunications Cooperative Association	NTCA
Nebraska Public Service Commission	Nebraska Commission
Nebraska Rural Independent Companies	Nebraska Rural Independent Companies
Net2Phone, Inc.	Net2Phone
New Jersey Board of Public Utilities	New Jersey Commission
New Jersey Division of the Ratepayer Advocate	New Jersey Ratepayer Advocate
New York State Department of Public Service	New York Commission
NexVortex, Inc.	nexVortex
Nortel Networks	Nortel
Nuvio Corporation	Nuvio
Office of Advocacy, U.S. Small Business Administration	SBA
Office of the Attorney General of Texas	Texas Attorney General
Office of the People's Counsel for the District of Columbia	D.C. Counsel
Ohio Public Utilities Commission	Ohio PUC
Omnitor	Omnitor
Organization for the Promotion and Advancement of Small Telecommunications Companies	OPASTCO

Pac-West Telecomm, Inc.	Pac-West
People of the State of California and the California Public Utilities Commission	California Commission
Public Service Commission of the State of Missouri	Missouri Commission
Pulver.com	pulver.com
Qwest Communications International Inc.	Qwest
Rehabilitation Engineering Research Center on Telecommunications Access	RERCTA
Rural Independent Competitive Alliance	RICA
SBC Communications, Inc.	SBC
Self Help for Hard of Hearing People	SHHHP
Skype, Inc.	Skype
Sonic.net, Inc.	Sonic.net
SPI Solutions, Inc.	SPI Solutions
Spokane County 911 Communications	Spokane County 911
Sprint Corporation	Sprint
TCA, Inc. – Telecom Consulting Associates	TCA
Telecommunications for the Deaf, Inc	TDI
Telecommunications Industry Association	TIA
Tellme Networks, Inc	Tellme Networks
Tennessee Regulatory Authority	TRA
Texas Coalition of Cities for Utility Issues	TCCFUI
Texas Commission on State Emergency Communications.	TCSEC
Texas Department of Information Resources	Texas DIR
Time Warner Inc.	Time Warner
Time Warner Telecom	TWTC
TracFone Wireless, Inc.	TracFone
UniPoint Enhanced Services Inc. d/b/a PointOne	PointOne
United States Conference of Catholic Bishops Alliance for Community Media Appalachian Peoples' Action Coalition Center for Digital Democracy Consumer Action Edgemont Neighborhood Coalition Migrant Legal Action Program	USCCB <i>et al.</i>
United States Department of Justice	DOJ
United States Telecom Association	USTA
United Telecom Council The United Power Line Council	UTC <i>et al.</i>
USA Datanet Corporation	USAD Datanet
Utah Division of Public Utilities	Utah Commission
Valor Telecommunications of Texas, L.P. and Iowa Telecommunications Services, Inc.	Valor <i>et al.</i>
VeriSign, Inc.	VeriSign
Verizon Telephone Company	Verizon
Vermont Public Service Board	Vermont
Virgin Mobile USA, LLC	Virgin Mobile
Virginia State Corporation Commission	Virginia Commission

Voice on the Net Coalition	VON Coalition
Vonage Holdings Corp	Vonage
Western Telecommunications Alliance	WTA
WilTel Communications, LLC	WilTel
Wisconsin Electric Power Company Wisconsin Gas	Wisconsin Electric <i>et al.</i>
Yellow Pages Integrated Media Association	YPIMA
Z-Tel Communications, Inc.	Z-Tel

Reply Comments

<u>Reply Comments</u>	<u>Abbreviation</u>
8X8, Inc.	8X8
Ad Hoc Telecom Manufacturer Coalition	Ad Hoc Telecom Manufacturers Coalition
Ad Hoc Telecommunications Users Committee	Ad Hoc
Adam D. Thierer, Director of Telecommunications Studies, Cato Institute	Thierer
Alcatel North America	Alcatel
Alliance for Public Technology et al.	APT <i>et al.</i>
American Cable Association	ACA
American Electric Power Service Corporation Duke Energy Corporation Xcel Energy Inc.	American Electric Power <i>et al.</i>
Association for Local Telecommunications Services	ALTS
AT&T Corp.	AT&T
Avaya Inc.	Avaya
BellSouth Corporation	BellSouth
Broadband Service Providers Association	BSPA
Cablevision Systems Corp.	Cablevision
Callipso Corporation	Callipso
Central Station Alarm Association	CSAA
Cingular Wireless LLC	Cingular
Cisco Systems, Inc.	Cisco
City and County of San Francisco	San Francisco
Comcast Corporation	Comcast
CompTel/Ascent	CompTel
Consumer Electronics Association	CEA
Consumer Federation of America Consumers Union	CFA <i>et al.</i>
Covad Communications	Covad
CTC Communications Corp.	CTS
CTIA-The Wireless Association	CTIA
Department of Defense	DoD
Donald Clark Jackson	Jackson
EarthLink, Inc.	EarthLink
Educause	Educause
Enterprise Communications Association	ECA
Ericsson Inc.	Ericsson

Florida Public Service Commission	Florida Commission
Francois D. Menard	Menard
General Communication (GCI)	GCI
Global Crossing North America, Inc.	Global Crossing
Independent Telephone & Telecommunications Alliance	ITTA
Information Technology Association of America	Information Technology Association of America
Intergovernmental Advisory Committee	IAC
Intrado Inc.	Intrado
Knology, Inc.	Knology
Level 3 Communications LLC	Level 3
Massachusetts Office of the Attorney General	Massachusetts Attorney General
MCI	MCI
Montana Public Service Commission	Montana Commission
Motorola, Inc.	Motorola
National Association of State Utility Consumer Advocates	NASUCA
National Association of Telecommunications Officers and Advisors National League of Cities National Association of Counties U.S. Conference of Mayors National Association of Towns and Townships Texas Coalition of Cities for Utility Issues Washington Association of Telecommunications Officers and Advisors Greater Metro Telecommunications Consortium Mr. Hood Cable Regulatory Commission Metropolitan Washington Council of Governments Rainier Communications Commission City of Philadelphia City of Tacoma, Washington Montgomery County, Maryland	NATOA <i>et al.</i>
National Cable & Telecommunications Association	NCTA
National Emergency Number Association	NENA
National Exchange Carrier Association, Inc.	NECA
Nebraska Public Service Commission	Nebraska Commission
Nebraska Rural Independent Companies	Nebraska Rural Independent Companies
Net2Phone, Inc.	Net2Phone
New Jersey Division of the Ratepayer Advocate	New Jersey Ratepayer Advocate
New York State Department of Public Service	New York Commission
Nextel Communications, Inc.	Nextel
Nuvio Corporation	Nuvio
Office of the People's Counsel for the District of Columbia	D.C. Counsel
Organization for the Promotion and Advancement of Small Telecommunications Companies	OPASTCO
Pac-West Telecomm, Inc.	Pac-West
Pennsylvania Public Utility Commission	Pennsylvania Commission

Public Service Commission of Wisconsin	Wisconsin Commission
Qwest Communications International Inc.	Qwest
Regulatory Studies Program (RSP) of the Mercatus Center at George Mason University	Mercatus Center
Rehabilitation Engineering Research Center on Telecommunications Access	RERCTA
RNKL, Inc. d/b/a RNK Telecom	RNK
Rural Independent Competitive Alliance	RICA
SBC Communications Inc.	SBC
Skype, Inc.	Skype
Southern Communications Services, Inc. d/b/a Southern LINC	Southern LINC
Sprint Corporation	Sprint
Telecommunications Industry Association	TIA
Tellme Networks, Inc	Tellme Networks
Texas Statewide Telephone Cooperative, Inc.	Texas Statewide Telephone Cooperative
Time Warner Telecom, Inc.	TWTC
T-Mobile USA, Inc.	T-Mobile
TracFone Wireless, Inc.	TracFone
United States Conference of Catholic Bishops Alliance for Community Media Appalachian Peoples' Action Coalition Center for Digital Democracy Consumer Action Edgemont Neighborhood Coalition Migrant Legal Action Program	USCCB <i>et al.</i>
United States Department of Justice	DOJ
United States Telecom Association	USTA
USA Datanet Corporation	USA Datanet
Utah Division of Public Utilities	Utah Commission
VeriSign, Inc.	VeriSign
Verizon Telephone Companies	Verizon
Voice on the Net Coalition	VON Coalition
Wisconsin Department of Public Instruction	Wisconsin Department of Public Instruction

APPENDIX B

Final Rules

Part 63 of Title 47 of the Code of Federal Regulations is amended to read as follows:

1. Section 63.60 is amended by redesignating paragraph (d) as paragraph (g); redesignating paragraph (c) as paragraph (e); redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively; and adding paragraphs (a), (b)(3), (d), and (f) to read as follows:

(a) For the purposes of sections 63.60 through 63.90 of these rules, the term “carrier,” when used to refer either to all telecommunications carriers or more specifically to non-dominant telecommunications carriers, shall include interconnected VoIP providers.

* * * * *

(b) * * *

(3) The conversion of an interconnected VoIP service to a service that permits users to receive calls that originate on the public switched telephone network but not terminate calls to the public switched telephone network, or the converse.

* * * * *

(d) The term “interconnected VoIP provider” is an entity that provides interconnected VoIP service as that term is defined in section 9.3 of these rules.

* * * * *

(f) For the purposes of sections 63.60 through 63.90 of these rules, the term “service,” when used to refer to a real-time, two-way voice communications service, shall include interconnected VoIP service as that term is defined in section 9.3 of these rules but shall not include any interconnected VoIP service that is a “mobile service” as defined in section 20.3 of these rules.

* * * * *

APPENDIX C

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *IP-Enabled Services Notice* in WC Docket 04-36.² The Commission sought written public comment on the proposals in the Notice, including comment on the IRFA.³ We received comments specifically directed toward the IRFA from three commenters in WC Docket No. 04-36. These comments are discussed below. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.⁴

A. Need for, and Objectives of, the Rules

2. This *Report and Order (Order)* takes a series of steps designed to ensure that consumers of interconnected Voice over Internet Protocol (VoIP) are afforded appropriate consumer protection measures consistent with the Communications Act of 1934, as amended (the Act). Today's telecommunications marketplace is one of rapidly changing technology, capability, and services. Since the Commission first described IP-enabled services nearly five years ago, the American public has embraced them, resulting in the widespread adoption of mass market interconnected VoIP and broadband services by millions of consumers for voice, video, and Internet communications. Consumers increasingly use interconnected VoIP service as a replacement for traditional voice service, and as interconnected VoIP service improves and proliferates, consumers' expectations for this type of service trend toward their expectations for other telephone services.⁵

3. This *Order* extends to providers of interconnected VoIP service the discontinuance obligations that apply to domestic non-dominant telecommunications carriers under section 214 of the Act. Consequently, before an interconnected VoIP provider may discontinue service, it must comply with the streamlined discontinuance requirements under Part 63 of the Commission's rules, including the requirements to provide written notice to all affected customers, notify relevant state authorities, and file an application for authorization of the planned discontinuance with the Commission.⁶

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-12, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4917, para. 91 & Appendix A (2004) (*IP-Enabled Services Notice*).

³ See *IP-Enabled Services Notice*, 19 FCC Rcd at 4917, para. 91 & Appendix A.

⁴ See 5 U.S.C. § 604.

⁵ See, e.g., *Order*, *supra* para. 1; U.S. VoIP Research Service, TeleGeography Research, at 2 (noting that the United States had 11.8 million VoIP subscribers in mid-2007), available at <http://www.telegeography.com/products/voip/index.php> (last visited May 13, 2009); JR, *US has overtaken Japan in retail VoIP subscriber numbers*, available at http://www.ilocus.com/2008/03/us_has_overtaken_japan_in_reta.html (last visited May 13, 2009) (noting that the United States had 16.1 million retail VoIP subscribers as of the fourth quarter of 2007).

⁶ See *Order*, *supra* paras. 14-17.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. In this section, we respond to comments filed in response to the IRFA.⁷ To the extent we received comments raising general small business concerns during these proceedings, those comments are discussed in the *Order*.

5. The Small Business Administration (SBA) comments that the Commission's *IP-Enabled Services Notice* does not contain concrete proposals and is more akin to an advance notice of proposed rulemaking or a notice of inquiry.⁸ We disagree with the SBA and Menard that the Commission should postpone acting in this proceeding, thereby postponing extending the application of the section 214 service discontinuance obligations to interconnected VoIP services. According to SBA and Menard, the Commission instead should reevaluate the economic impact and the compliance burdens on small entities and issue a further notice of proposed rulemaking in conjunction with a supplemental IRFA identifying and analyzing the economic impacts on small entities and less burdensome alternatives.⁹ We believe these additional steps suggested by SBA and Menard are unnecessary because small entities already have received sufficient notice of the issues addressed in today's *Order*,¹⁰ and because the Commission has considered the economic impact on small entities and the feasibility of alternative approaches to minimize the burdens imposed on those entities.¹¹

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

6. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.¹² The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹³ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹⁴ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹⁵

⁷ See SBA Comments, WC Docket No. 04-36 (filed May 28, 2004); Menard Comments, WC Docket No. 04-36 (filed May 28, 2004); Menard Reply, WC Docket No. 04-36 (filed July 15, 2004).

⁸ See SBA Comments at 1.

⁹ See SBA Comments at 2, 4, 6; Menard Comments; Menard Reply at 4.

¹⁰ The *IP-Enabled Services Notice* specifically sought comment on whether to extend consumer protections afforded in the Act to subscribers of VoIP or other IP-enabled services. See *IP-Enabled Services Notice*, 19 FCC Rcd at 4910-11, paras. 71-72. The Commission published a summary of that notice in the Federal Register. See *Regulatory Requirements for IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 69 FR 16193 (Mar. 29, 2004). We note that a number of small entities submitted comments in this proceeding. See *supra* Appendix A.

¹¹ See, e.g., *Order*, *supra* note 52.

¹² 5 U.S.C. §§ 603(b)(3), 604(a)(3).

¹³ 5 U.S.C. § 601(6).

¹⁴ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such terms which are appropriate to the activities of the agency and publishes such definitions(s) in the Federal Register."

¹⁵ 15 U.S.C. § 632.

7. *Small Businesses.* Nationwide, there are a total of approximately 22.4 million small businesses according to SBA data.¹⁶

8. *Small Organizations.* Nationwide, there are approximately 1.6 million small organizations.¹⁷

1. Telecommunications Service Entities

a. Wireline Carriers and Service Providers

9. We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees) and “is not dominant in its field of operation.”¹⁸ The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.¹⁹ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

10. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent LECs. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁰ According to Commission data,²¹ 1,311 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

11. *Competitive LECs, Competitive Access Providers (CAPs), “Shared-Tenant Service Providers,” and “Other Local Service Providers.”* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²² According to Commission data,²³ 1,005 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive LEC services. Of these 1,005 carriers, an estimated 918 have 1,500 or fewer employees and

¹⁶ See SBA, Programs and Services, SBA Pamphlet No. CO-0028, at page 40 (July 2002).

¹⁷ Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

¹⁸ 15 U.S.C. § 632.

¹⁹ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of “small-business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. See 13 C.F.R. § 121.102(b).

²⁰ 13 C.F.R. § 121.201, NAICS code 517110.

²¹ FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service* at Table 5.3, page 5-5 (Aug. 2008) (*Trends in Telephone Service*). This source uses data that are current as of November 1, 2006.

²² 13 C.F.R. § 121.201, NAICS code 517110.

²³ *Trends in Telephone Service* at Table 5.3.

87 have more than 1,500 employees. In addition, 16 carriers have reported that they are “Shared-Tenant Service Providers,” and all 16 are estimated to have 1,500 or fewer employees. In addition, 89 carriers have reported that they are “Other Local Service Providers,” and all 89 are estimated to have 1,500 or fewer employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, “Shared-Tenant Service Providers,” and “Other Local Service Providers” are small entities.

12. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁴ According to Commission data,²⁵ 151 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 149 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our action.

13. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁶ According to Commission data,²⁷ 815 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 787 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

14. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁸ According to Commission data,²⁹ 300 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 268 have 1,500 or fewer employees and 32 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our action.

b. Satellite Telecommunications and All Other Telecommunications

15. *Satellite Telecommunications and All Other Telecommunications.* These two economic census categories address the satellite industry. The first category has a small business size standard of \$15 million or less in average annual receipts, under SBA rules.³⁰ The second has a size standard of \$25 million or less in annual receipts.³¹ The most current Census Bureau data in this context, however, are from the (last) economic census of 2002, and we will use those figures to gauge the prevalence of small businesses in these categories.³²

²⁴ 13 C.F.R. § 121.201, NAICS code 517310.

²⁵ *Trends in Telephone Service* at Table 5.3.

²⁶ 13 C.F.R. § 121.201, NAICS code 517310.

²⁷ *Trends in Telephone Service* at Table 5.3.

²⁸ 13 C.F.R. § 121.201, NAICS code 517110.

²⁹ *Trends in Telephone Service* at Table 5.3.

³⁰ 13 C.F.R. § 121.201, NAICS code 517410.

³¹ 13 C.F.R. § 121.201, NAICS code 517919.

³² 13 C.F.R. § 121.201, NAICS codes 517410 and 517910 (2002).

16. The category of Satellite Telecommunications “comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”³³ For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.³⁴ Of this total, 307 firms had annual receipts of under \$10 million, and 26 firms had receipts of \$10 million to \$24,999,999.³⁵ Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

17. The second category of All Other Telecommunications comprises, *inter alia*, “establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.”³⁶ For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.³⁷ Of this total, 303 firms had annual receipts of under \$10 million and 15 firms had annual receipts of \$10 million to \$24,999,999.³⁸ Consequently, we estimate that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

c. Wireless Telecommunications Carriers (except Satellite)

18. Below, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

19. *Wireless Telecommunications Carriers (except Satellite)*. Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.³⁹ Prior to that time, such firms were within the now-superseded categories of “Paging” and “Cellular and Other Wireless Telecommunications.”⁴⁰ Under the present and prior categories, the SBA has deemed a wireless business

³³ U.S. Census Bureau, 2007 NAICS Definitions, “517410 Satellite Telecommunications”; <http://www.census.gov/naics/2007/def/ND517410.HTM>.

³⁴ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 517410 (issued Nov. 2005).

³⁵ *Id.* An additional 38 firms had annual receipts of \$25 million or more.

³⁶ U.S. Census Bureau, 2007 NAICS Definitions, “517919 All Other Telecommunications”; <http://www.census.gov/naics/2007/def/ND517919.HTM#N517919>.

³⁷ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 517910 (issued Nov. 2005).

³⁸ *Id.* An additional 14 firms had annual receipts of \$25 million or more.

³⁹ U.S. Census Bureau, 2007 NAICS Definitions, “517210 Wireless Telecommunications Categories (Except Satellite)”; <http://www.census.gov/naics/2007/def/ND517210.HTM#N517210>.

⁴⁰ U.S. Census Bureau, 2002 NAICS Definitions, “517211 Paging”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>; U.S. Census Bureau, 2002 NAICS Definitions, “517212 Cellular and Other Wireless Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

to be small if it has 1,500 or fewer employees.⁴¹ Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.⁴² Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.⁴³ For the category of Wireless Telecommunications Carriers (except Satellite), data for 2002 show that there were 1,397 firms that operated for the entire year.⁴⁴ Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.⁴⁵ Thus, we estimate that the majority of wireless firms are small.

20. In the *Paging Third Report and Order*, we developed a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁴⁶ A “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.⁴⁷ The SBA has approved these small business size standards.⁴⁸ An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.⁴⁹ Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. An auction of MEA and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold.⁵⁰ One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status

⁴¹ 13 C.F.R. § 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

⁴² U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517211 (issued Nov. 2005).

⁴³ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

⁴⁴ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517212 (issued Nov. 2005).

⁴⁵ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

⁴⁶ *Amendment of Part 90 of the Commission’s Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, PR Docket No. 89-552, Third Report and Order and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10943, 11068-70, paras. 291-295, 62 FR 16004 (1997) (*220 MHz Third Report and Order*).

⁴⁷ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from A. Alvarez, Administrator, SBA (Dec. 2, 1998) (SBA Dec. 2, 1998 Letter).

⁴⁸ *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, paras. 98-107 (1999).

⁴⁹ *Id.* at 10085, para. 98.

⁵⁰ See *Lower and Upper Paging Band Auction Closes*, Public Notice, 16 FCC Rcd 21821 (WTB 2002).

won 2,093 licenses.⁵¹ We also note that, currently, there are approximately 74,000 Common Carrier Paging licenses.

21. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A “small business” is an entity with average gross revenues of \$40 million or less for each of the three preceding years, and a “very small business” is an entity with average gross revenues of \$15 million or less for each of the three preceding years. The SBA has approved these small business size standards.⁵² The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as “very small business” entities, and one that qualified as a “small business” entity.

22. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for “Wireless Telecommunications Carriers (except Satellite)” services.⁵³ Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.⁵⁴ According to Commission data, 434 carriers reported that they were engaged in the provision of wireless telephony.⁵⁵ We have estimated that 222 of these are small under the SBA small business size standard.

23. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined “small entity” for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years.⁵⁶ For Block F, an additional classification for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.⁵⁷ These standards defining “small entity” in the context of broadband PCS auctions have been approved by the SBA.⁵⁸ No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.⁵⁹ On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business

⁵¹ See *Lower and Upper Paging Bands Auction Closes*, Public Notice, 18 FCC Rcd 11154 (WTB 2003).

⁵² SBA Dec. 2, 1998 Letter.

⁵³ 13 C.F.R. § 121.201, NAICS code 517212.

⁵⁴ *Id.*

⁵⁵ *Trends in Telephone Service* at Table 5.3.

⁵⁶ See *Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, Report and Order, 11 FCC Rcd 7824, 61 FR 33859 (July 1, 1996) (*PCS Order*); see also 47 C.F.R. § 24.720(b).

⁵⁷ See *PCS Order*, 11 FCC Rcd 7824.

⁵⁸ See, e.g., *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5332, 59 FR 37566 (July 22, 1994).

⁵⁹ FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (rel. Jan. 14, 1997); see also *Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses*, WT Docket No. 97-82, Second Report and Order, 12 FCC Rcd 16436, 62 FR 55348 (Oct. 24, 1997).

winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

24. *Narrowband Personal Communications Services.* The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, “small businesses” were entities with average gross revenues for the prior three calendar years of \$40 million or less.⁶⁰ Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.⁶¹ To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order.⁶² A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million.⁶³ A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million.⁶⁴ The SBA has approved these small business size standards.⁶⁵ A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.⁶⁶ Three of these claimed status as a small or very small entity and won 311 licenses.

25. *220 MHz Radio Service – Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to “Wireless Telecommunications Carriers (except Satellite)” companies. This category provides that a small business is a wireless company employing no more than 1,500 persons.⁶⁷ Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire

⁶⁰ *Implementation of Section 309(j) of the Communications Act – Competitive Bidding Narrowband PCS*, Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 175, 196, para. 46 (1994).

⁶¹ *See Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total \$617,006,674*, Public Notice, PNWL 94-004 (rel. Aug. 2, 1994); *Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total \$490,901,787*, Public Notice, PNWL 94-27 (rel. Nov. 9, 1994).

⁶² *Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS*, ET Docket No. 92-100, PP Docket No. 93-253, Second Report and Order and Second Further Notice of Proposed Rule Making, 15 FCC Rcd 10456, 10476, para. 40 (2000).

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *See Letter from Aida Alvarez, Administrator, Small Business Administration, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission* (dated Dec. 2, 1998).

⁶⁶ *See Narrowband PCS Auction Closes*, Public Notice, 16 FCC Rcd 18663 (WTB 2001).

⁶⁷ 13 C.F.R. § 121.201, NAICS code 517212.

year.⁶⁸ Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.⁶⁹ Thus, under this category and size standard, the majority of firms can be considered small.

26. *220 MHz Radio Service – Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted a small business size standard for “small” and “very small” businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁷⁰ This small business size standard indicates that a “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.⁷¹ A “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years. The SBA has approved these small business size standards.⁷² Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.⁷³ In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.⁷⁴ Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.⁷⁵ A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.⁷⁶

27. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards “small entity” and “very small entity” bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years, or that had revenues of no more than \$3 million in each of the previous calendar years, respectively.⁷⁷ These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing

⁶⁸ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517212 (issued Nov. 2005).

⁶⁹ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

⁷⁰ *220 MHz Third Report and Order*, 12 FCC Rcd at 11068-70, paras. 291-95.

⁷¹ *Id.* at 11068, para. 291.

⁷² See Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (Jan. 6, 1998).

⁷³ See generally *220 MHz Service Auction Closes*, Public Notice, 14 FCC Rcd 605 (1998).

⁷⁴ See, e.g., *FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made*, Public Notice, 14 FCC Rcd 1085 (1999).

⁷⁵ *Phase II 220 MHz Service Spectrum Auction Closes*, Public Notice, 14 FCC Rcd 11218 (1999).

⁷⁶ See *Multi-Radio Service Auction Closes*, Public Notice, 17 FCC Rcd 1446 (WTB 2002).

⁷⁷ 47 C.F.R. § 90.814(b)(1).

extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities.

28. *700 MHz Guard Band Licensees.* In the *700 MHz Guard Band Order*, we adopted a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁷⁸ A “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.⁷⁹ Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.⁸⁰ Subsequently, in the *700 MHz Second Report and Order*, the Commission reorganized the licenses pursuant to an agreement among most of the licensees, resulting in a spectral relocation of the first set of paired spectrum block licenses, and an elimination of the second set of paired spectrum block licenses (many of which were already vacant, reclaimed by the Commission from Nextel).⁸¹ A single licensee that did not participate in the agreement was grandfathered in the initial spectral location for its two licenses in the second set of paired spectrum blocks.⁸² Accordingly, at this time there are 54 licenses in the 700 MHz Guard Bands and there is no auction data applicable to determine which are held by small businesses.

29. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses – an entity that has average gross revenues of \$40 million or less in the three previous calendar years.⁸³ An additional size standard for “very small business” is: an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.⁸⁴ The SBA has approved these small business size standards.⁸⁵ The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies adopted herein.

⁷⁸ See *Service Rules for the 746-764 MHz Bands, and Revisions to part 27 of the Commission’s Rules*, WT Docket No. 99-168, Second Report and Order, 15 FCC Rcd 5299, 65 FR 17594 (2000).

⁷⁹ See generally *220 MHz Service Auction Closes*, Public Notice, Report No. WT 98-36 (rel. Oct. 23, 1998).

⁸⁰ *700 MHz Guard Band Auction Closes*, Public Notice, 16 FCC Rcd 4590 (rel. Feb. 22, 2001).

⁸¹ See *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket 06-150, Second Report and Order, 22 FCC Rcd 15289, 15339-15344, paras. 118-134 (2007) (*700 MHz Second Report and Order*).

⁸² *Id.*

⁸³ See *Amendment of the Commission’s Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands*, ET Docket No. 95-183, Report and Order and Notice of Proposed Rulemaking, 12 FCC Rcd 18600, 63 FR 6079 (Feb. 6, 1998).

⁸⁴ *Id.*

⁸⁵ See Letter from Aida Alvarez, Administrator, SBA, to Kathleen O’Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (Feb. 4, 1998).

30. *Wireless Cable Systems.* Wireless cable systems use 2 GHz band frequencies of the Broadband Radio Service (“BRS”), formerly Multipoint Distribution Service (“MDS”),⁸⁶ and the Educational Broadband Service (“EBS”), formerly Instructional Television Fixed Service (“ITFS”),⁸⁷ to transmit video programming and provide broadband services to residential subscribers.⁸⁸ These services were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services.⁸⁹ We estimate that the number of wireless cable subscribers is approximately 100,000, as of March 2005. Local Multipoint Distribution Service (“LMDS”) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.⁹⁰ As described below, the SBA small business size standard for the broad census category of Cable and Other Program Distribution, which consists of such entities generating \$13.5 million or less in annual receipts, appears applicable to MDS, ITFS and LMDS.⁹¹ Other standards also apply, as described.

31. The Commission has defined small MDS (now BRS) and LMDS entities in the context of Commission license auctions. In the 1996 MDS auction,⁹² the Commission defined a small business as an entity that had annual average gross revenues of less than \$40 million in the previous three calendar years.⁹³ This definition of a small entity in the context of MDS auctions has been approved by the SBA.⁹⁴ In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48

⁸⁶ MDS, also known as Multichannel Multipoint Distribution Service (“MMDS”), is regulated by Part 21 of the Commission’s rules, *see* 47 C.F.R. Part 21, subpart K, and has been renamed the Broadband Radio Service (BRS). *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands; Part 1 of the Commission’s Rules - Further Competitive Bidding Procedures; Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions; Amendment of Parts 21 and 74 of the Commission’s Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico; Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, WT Docket Nos. 03-66, 03-67, 02-68, and 00-230, MM Docket No. 97-217, RM-10586, RM-9718, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 (2004) (*MDS/ITFS Order*).

⁸⁷ ITFS systems are regulated by Part 74 of the Commission’s rules; *see* 47 C.F.R. Part 74, subpart I. ITFS, an educational service, has been renamed the Educational Broadband Service (EBS). *See MDS/ITFS Order*, 19 FCC Rcd 14165. ITFS licensees, however, are permitted to lease spectrum for MDS operation.

⁸⁸ *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eleventh Annual Report, 20 FCC Rcd 2507, 2565, para. 131 (2006) (*2006 Cable Competition Report*).

⁸⁹ *Id.*

⁹⁰ *See Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission’s Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fix Satellite Services*, CC Docket No. 92-297, Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 12545 (1997) (*Local Multipoint Distribution Service Order*).

⁹¹ 13 C.F.R. § 121.201, NAICS code 517510.

⁹² MDS Auction No. 6 began on November 13, 1995, and closed on March 28, 1996. 67 bidders won 493 licenses.

⁹³ 47 C.F.R. § 21.961(b)(1).

⁹⁴ *See Amendment of Parts 21 and 74 of the Commission’s Rules With Regard to Filing Procedures in the Multipoint Distribution Service & in the Instructional Television Fixed Service*, MM Docket No. 94-131, PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589 (1995).

remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than \$40 million and are thus considered small entities.⁹⁵ MDS licensees and wireless cable operators that did not receive their licenses as a result of the MDS auction fall under the SBA small business size standard for Cable and Other Program Distribution. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of \$13.5 million annually. Therefore, we estimate that there are approximately 850 small entity MDS (or BRS) providers, as defined by the SBA and the Commission's auction rules.

32. Educational institutions are included in this analysis as small entities; however, the Commission has not created a specific small business size standard for ITFS (now EBS).⁹⁶ We estimate that there are currently 2,032 ITFS (or EBS) licensees, and all but 100 of the licenses are held by educational institutions. Thus, we estimate that at least 1,932 ITFS licensees are small entities.

33. In the 1998 and 1999 LMDS auctions,⁹⁷ the Commission defined a small business as an entity that has annual average gross revenues of less than \$40 million in the previous three calendar years.⁹⁸ Moreover, the Commission added an additional classification for a "very small business," which was defined as an entity that had annual average gross revenues of less than \$15 million in the previous three calendar years.⁹⁹ These definitions of "small business" and "very small business" in the context of the LMDS auctions have been approved by the SBA.¹⁰⁰ In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, we believe that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

34. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.¹⁰¹ The auction of the 1,030 LMDS licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licensees as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.¹⁰² An additional small business size standard for "very small business" was added as an entity that, together

⁹⁵ 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standards for "other telecommunications" (annual receipts of \$13.5 million or less). See 13 C.F.R. § 121.201, NAICS code 517910.

⁹⁶ In addition, the term "small entity" under SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6). We do not collect annual revenue data on ITFS licensees.

⁹⁷ The Commission has held two LMDS auctions: Auction 17 and Auction 23. Auction No. 17, the first LMDS auction, began on February 18, 1998, and closed on March 25, 1998. (104 bidders won 864 licenses.) Auction No. 23, the LMDS re-auction, began on April 27, 1999, and closed on May 12, 1999. (40 bidders won 161 licenses.)

⁹⁸ See *Local Multipoint Distribution Service Order*, 12 FCC Rcd at 12545.

⁹⁹ *Id.*

¹⁰⁰ See Letter from A. Alvarez, Administrator, SBA, to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, FCC (January 6, 1998).

¹⁰¹ See *Local Multipoint Distribution Service Order*, 12 FCC Rcd at 12545.

¹⁰² *Id.*

with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.¹⁰³ The SBA has approved these small business size standards in the context of LMDS auctions.¹⁰⁴ There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

35. *218-219 MHz Service.* The first auction of 218-219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years.¹⁰⁵ In the *218-219 MHz Report and Order and Memorandum Opinion and Order*, we established a small business size standard for a “small business” as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years.¹⁰⁶ A “very small business” is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years.¹⁰⁷ We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218-219 MHz spectrum.

36. *24 GHz – Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of “Wireless Telecommunications Carriers (except Satellite)” companies. This category provides that such a company is small if it employs no more than 1,500 persons.¹⁰⁸ According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.¹⁰⁹ Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.¹¹⁰ Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from

¹⁰³ *See id.*

¹⁰⁴ *See* Letter from Aida Alvarez, Administrator, SBA, from Dan Phythyon, Chief, Wireless Telecommunications Bureau, FCC (Jan. 6, 1998).

¹⁰⁵ *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fourth Report and Order, 9 FCC Rcd 2330, 59 FR 24947 (May 13, 1994).

¹⁰⁶ *Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, WT Docket No. 98-169, Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497, 64 FR 59656 (Nov. 3, 1999).

¹⁰⁷ *Id.*

¹⁰⁸ 13 C.F.R. § 121.201, NAICS code 517212.

¹⁰⁹ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Employment Size of Firms Subject to Federal Income Tax: 1997,” Table 5, NAICS code 513322 (issued Oct. 2000).

¹¹⁰ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is “Firms with 1,000 employees or more.”

the 18 GHz band, Teligent¹¹¹ and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

37. *24 GHz – Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for “small business” is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of \$15 million.¹¹² “Very small business” in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years.¹¹³ The SBA has approved these small business size standards.¹¹⁴ These size standards will apply to the future auction, if held.

2. Cable and OVS Operators

38. *Cable Television Distribution Services.* The “Cable and Other Program Distribution” census category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”¹¹⁵ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having \$13.5 million or less in annual receipts.¹¹⁶ According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.¹¹⁷ Of this total, 1,087 firms had annual receipts of under \$10

¹¹¹ Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

¹¹² *Amendments to Parts 1,2, 87 and 101 of the Commission’s Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd 16934, 16967, para. 77 (2000); *see also* 47 C.F.R. § 101.538(a)(2).

¹¹³ *Amendments to Parts 1,2, 87 and 101 of the Commission’s Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd 16934, 16967, para. 77 (2000); *see also* 47 C.F.R. § 101.538(a)(1).

¹¹⁴ *See* Letter from Gary M. Jackson, Assistant Administrator, SBA, to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (July 28, 2000).

¹¹⁵ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition); <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

¹¹⁶ 13 C.F.R. § 121.201, NAICS code 517110.

¹¹⁷ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

million, and 43 firms had receipts of \$10 million or more but less than \$25 million.¹¹⁸ Thus, the majority of these firms can be considered small.

39. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide.¹¹⁹ Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.¹²⁰ In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.¹²¹ Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have fewer than 10,000 subscribers, and an additional 379 systems have 10,000-19,999 subscribers.¹²² Thus, under this second size standard, most cable systems are small

40. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."¹²³ The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.¹²⁴ Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.¹²⁵ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,¹²⁶ and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

41. *Open Video Systems (OVS).* In 1996, Congress established the open video system (OVS) framework, one of four statutorily recognized options for the provision of video programming services by

¹¹⁸ *Id.* An additional 61 firms had annual receipts of \$25 million or more.

¹¹⁹ 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, MM Docket Nos. 92-266, 93-215, 10 FCC Rcd 7393, 7408 (1995).

¹²⁰ These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

¹²¹ 47 C.F.R. § 76.901(c).

¹²² Warren Communications News, *Television & Cable Factbook 2006*, "U.S. Cable Systems by Subscriber Size," page F-2 (data current as of Oct. 2005). The data do not include 718 systems for which classifying data were not available.

¹²³ 47 U.S.C. § 543(m)(2); see 47 C.F.R. § 76.901(f) & nn.1-3.

¹²⁴ 47 C.F.R. § 76.901(f); see *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, DA 01-158, 16 FCC Rcd 2225 (Cable Services Bureau, Jan. 24, 2001).

¹²⁵ These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

¹²⁶ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. See 47 C.F.R. § 76.909(b).

local exchange carriers (LECs).¹²⁷ The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,¹²⁸ OVS falls within the SBA small business size standard of Cable and Other Program Distribution Services, which consists of such entities having \$13.5 million or less in annual receipts.¹²⁹ The Commission has certified 25 OVS operators, with some now providing service. Broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises.¹³⁰ As of June, 2005, BSPs served approximately 1.4 million subscribers, representing 1.5 percent of all MVPD households.¹³¹ Affiliates of Residential Communications Network, Inc. (RCN), which serves about 371,000 subscribers as of June, 2005, is currently the largest BSP and 14th largest MVPD.¹³² RCN received approval to operate OVS systems in New York City, Boston, Washington, D.C. and other areas. The Commission does not have financial information regarding the entities authorized to provide OVS, some of which may not yet be operational. We thus believe that at least some of the OVS operators may qualify as small entities.

42. *Satellite Carriers.* The term “satellite carrier” includes entities providing services as described in 17 U.S.C. § 119(d)(6) using the facilities of a satellite or satellite service licensed under Part 25 of the Commission’s rules to operate in Direct Broadcast Satellite (“DBS”) or Fixed-Satellite Service (“FSS”) frequencies.¹³³ As a general practice, not mandated by any regulation, DBS licensees usually own and operate their own satellite facilities as well as package the programming they offer to their subscribers. In contrast, satellite carriers using FSS facilities often lease capacity from another entity that is licensed to operate the satellite used to provide service to subscribers. These entities package their own programming and may or may not be Commission licensees themselves. In addition, a third situation may include an entity using a non-U.S. licensed satellite to provide programming to subscribers in the United States pursuant to a blanket earth station license.¹³⁴ Since 2007, the SBA has recognized satellite television distribution services within the broad economic census category of Wired Telecommunications Carriers.¹³⁵ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. The most current Census Bureau data, however, are from the last economic census of 2002, and we will use those figures to gauge the prevalence of small businesses in

¹²⁷ 47 U.S.C. § 571(a)(3)-(4). See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eleventh Annual Report*, 20 FCC Rcd 2507, 2549, para. 88 (2006) (*2006 Cable Competition Report*).

¹²⁸ See 47 U.S.C. § 573.

¹²⁹ 13 C.F.R. § 121.201, NAICS code 517510.

¹³⁰ See *2006 Cable Competition Report*, 20 FCC Rcd at 2549, para. 88. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

¹³¹ See *id.* at 2507, para. 14.

¹³² See *2006 Cable Competition Report*, 20 FCC Rcd at 2549, para. 89. WideOpenWest is the second largest BSP and 16th largest MVPD, with cable systems serving about 292,000 subscribers as of June 2005. The third largest BSP is Knology, serving approximately 170,800 subscribers as of June 2005. *Id.*

¹³³ Part 100 of the Commission’s Rules was eliminated in 2002 and now both FSS and DBS satellite facilities are licensed pursuant to Part 25 of the rules. *Policies and Rules for the Direct Broadcast Satellite Service*, 17 FCC Rcd 11331 (2002); 47 C.F.R. § 25.148.

¹³⁴ See, e.g., *Application Of DirecTV Enterprises, LLC, Request For Special Temporary Authority for the DirecTV 5 Satellite; Application Of DirecTV Enterprises, LLC, Request for Blanket Authorization for 1,000,000 Receive Only Earth Stations to Provide Direct Broadcast Satellite Service in the U.S. using the Canadian Authorized DirecTV 5 Satellite at the 72.5° W.L. Broadcast Satellite Service Location*, 19 FCC Rcd 15529 (Sat. Div. 2004).

¹³⁵ 13 C.F.R. § 121.201, NAICS code 517110 (2007).

this category. Those size standards are for the two census categories of “Satellite Telecommunications” and “Other Telecommunications.” Under both prior categories, such a business was considered small if it had \$13.5 million or less in average annual receipts.¹³⁶

43. *Direct Broadcast Satellite (DBS) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic “dish” antenna at the subscriber’s location. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Wired Telecommunications Carriers.¹³⁷ However, as discussed above, we rely on the previous size standard, Cable and Other Subscription Programming, which provides that a small entity is one with \$13.5 million or less in annual receipts.¹³⁸ Currently, only two operators – DirecTV¹³⁹ and EchoStar Communications Corporation (“EchoStar”)¹⁴⁰ – hold licenses to provide DBS service, which requires a great investment of capital for operation. Both currently offer subscription services and report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS licensee. Nevertheless, given the absence of specific data on this point, we acknowledge the possibility that there are entrants in this field that may not yet have generated \$13.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

44. *Fixed-Satellite Service (“FSS”).* The FSS is a radiocommunication service between earth stations at a specified fixed point or between any fixed point within specified areas and one or more satellites.¹⁴¹ The FSS, which utilizes many earth stations that communicate with one or more space stations, may be used to provide subscription video service. Therefore, to the extent FSS frequencies are used to provide subscription services, FSS falls within the SBA-recognized definition of Wired Telecommunications Carriers.¹⁴² However, as discussed above, we rely on the previous size standard, Cable and Other Subscription Programming, which provides that a small entity is one with \$13.5 million or less in annual receipts.¹⁴³ Although a number of entities are licensed in the FSS, not all such licensees use FSS frequencies to provide subscription services. Both of the DBS licensees (EchoStar and DirecTV) have indicated interest in using FSS frequencies to broadcast signals to subscribers. It is possible that other entities could similarly use FSS frequencies, although we are not aware of any entities that might do so.

3. Internet Service Providers

45. *Internet Service Providers.* The 2007 Economic Census places these providers, which includes voice over Internet protocol (VoIP) providers, in the category of All Other

¹³⁶ 13 C.F.R. § 121.201, NAICS codes 517410 and 517910 (2002).

¹³⁷ 13 C.F.R. § 121.201, NAICS Code 517110 (2007).

¹³⁸ 13 C.F.R. § 121.201, NAICS Code 515210 (2002).

¹³⁹ DirecTV is the largest DBS operator and the second largest MVPD, serving an estimated 14.67 million subscribers nationwide, as of June 2005; see *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, MB Docket No. 05-255, Twelfth Annual Report, 21 FCC Rcd 2503, 2540, para. 73 (2006).

¹⁴⁰ EchoStar, which provides service under the brand name Dish Network, is the second largest DBS operator and the third largest MVPD, serving an estimated 11.45 million subscribers nationwide, as of June 2005. *Id.*

¹⁴¹ See 47 C.F.R. § 2.1(c).

¹⁴² 13 C.F.R. § 121.201, NAICS Code 517110 (2007).

¹⁴³ 13 C.F.R. § 121.201, NAICS code 515210 (2002).

Telecommunications.¹⁴⁴ The SBA small business size standard for such firms is: those having annual average receipts of \$25 million or less.¹⁴⁵ The most current Census Bureau data on such entities, however, are the 2002 data for the previous census category¹⁴⁶ called Internet Service Providers. The 2002 data show that there were 2,529 such firms that operated for the entire year.¹⁴⁷ Of those, 2,437 firms had annual receipts of under \$10 million, and an additional 47 firms had receipts of between \$10 million and \$24,999,999.¹⁴⁸ Consequently, we estimate that the majority of ISP firms are small entities that may be affected by our action.

4. Other Internet-Related Entities

46. *Internet Publishing and Broadcasting and Web Search Portals.* The Census Bureau defines this category as including “establishments primarily engaged in 1) publishing and/or broadcasting content on the Internet exclusively or 2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals). . . . Establishments known as Web search portals often provide additional Internet services, such as e-mail, connections to other web sites, auctions, news, and other limited content, and serve as a home base for Internet users.”¹⁴⁹ The SBA small business size standard for such firms is: those having 500 or fewer employees.¹⁵⁰ The most current Census Bureau data on such entities, however, are the 2002 data for the previous two separate categories of Internet Publishing and Broadcasting, and Web Search Portals. Entities.¹⁵¹ For the first previous category, the 2002 data show that there were 1,362 firms that operated for the entire year.¹⁵² Of these, 1,351 had employment of 499 or fewer employees, and 11 firms had employment of between 500 and 999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action. For the second previous census category of Web Search Portals, the SBA had developed a small business size standard of \$6.5 million or less in average annual receipts.¹⁵³ According to the data for 2002, there were 342 firms in this category that operated for the entire year.¹⁵⁴ Of these, 303 had annual receipts of under \$5 million, and an additional 15

¹⁴⁴ U.S. Census Bureau, 2007 NAICS Definitions, “517919 All Other Telecommunications”; <http://www.census.gov/naics/2007/def/ND517919.HTM#N517919>.

¹⁴⁵ 13 C.F.R. § 121.201, NAICS code 517919 (updated for inflation in 2008).

¹⁴⁶ U.S. Census Bureau, “2002 NAICS Definitions: 518111 Internet Service Providers”; <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

¹⁴⁷ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 518111 (issued Nov. 2005).

¹⁴⁸ An additional 45 firms had receipts of \$25 million or more.

¹⁴⁹ U.S. Census Bureau, 2007 NAICS Definitions, “519130 Internet Publishing and Broadcasting and Web Search Portals”; <http://www.census.gov/naics/2007/def/ND519130.HTM#N519130>.

¹⁵⁰ 13 C.F.R. § 121.201, NAICS code 519130 (revised in 2008 to be an entirely employee-based standard).

¹⁵¹ U.S. Census Bureau, “2002 NAICS Definitions: 516110 Internet Publishing and Broadcasting”; <http://www.census.gov/epcd/naics02/def/NDEF516.HTM>; U.S. Census Bureau, “2002 NAICS Definitions: 518112 Web Search Portals”; <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

¹⁵² U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 516110 (issued Nov. 2005). This previous category followed the size standard of 500 or fewer employees. Superseded citation: 13 C.F.R. § 121.201, NAICS code 516110.

¹⁵³ Superseded citation: 13 C.F.R. § 121.201, NAICS code 518112.

¹⁵⁴ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 518112 (issued Nov. 2005).

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firms had receipts of between \$5 million and \$9,999,999. Consequently, we estimate that the majority of Web Search Portals firms are small entities that may be affected by our action.

47. *Data Processing, Hosting, and Related Services.* Entities in this category “primarily . . . provid[e] infrastructure for hosting or data processing services.”¹⁵⁵ The SBA has developed a small business size standard for this category; that size standard is \$23 million or less in average annual receipts.¹⁵⁶ According to Census Bureau data for 2002, there were 6,877 firms in this category that operated for the entire year.¹⁵⁷ Of these, 6,418 had annual receipts of under \$10 million, and an additional 251 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

48. *All Other Information Services.* “This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives).”¹⁵⁸ Our action pertains to VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is \$6.5 million or less in average annual receipts.¹⁵⁹ According to Census Bureau data for 2002, there were 155 firms in this category that operated for the entire year.¹⁶⁰ Of these, 138 had annual receipts of under \$5 million, and an additional four firms had receipts of between \$5 million and \$9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

49. In this *Order*, we require providers of interconnected VoIP service to take actions to comply with section 214 service discontinuance obligations. For example, to protect against abrupt termination of service, the *Order* requires providers of interconnected VoIP services to be subject to the same service discontinuance procedures as non-dominant carriers.¹⁶¹ Thus, we require that a provider of interconnected VoIP service seeking to discontinue service provide all affected customers with notice of the planned discontinuance of service. Specifically, the *Order* requires an interconnected VoIP provider to provide all affected customers with its name and address, the date of the planned service discontinuance, the geographic areas where service will be discontinued, a brief description of the service to be discontinued, and the statement found in section 63.71(a)(5)(i) of the Commission’s rules.¹⁶² The

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¹⁵⁵ U.S. Census Bureau, “2002 NAICS Definitions: 518210 Data Processing, Hosting, and Related Services,” available at <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

¹⁵⁶ 13 C.F.R. § 121.201, NAICS code 518210.

¹⁵⁷ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 518210 (issued Nov. 2005).

¹⁵⁸ U.S. Census Bureau, “2002 NAICS Definitions: 519190 All Other Information Services,” available at <http://www.census.gov/epcd/naics02/def/NDEF519.HTM>.

¹⁵⁹ 13 C.F.R. § 121.201, NAICS code 519190.

¹⁶⁰ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 519190 (issued Nov. 2005).

¹⁶¹ See *Order*, *supra* para. 14.

¹⁶² See *id* at para. 16.

Order requires written notice to be provided to each affected customer, but allows the Commission to authorize in advance another form of notice for good cause shown upon request.

50. The *Order* also requires an interconnected VoIP provider to file with the Commission an application for authorization of the planned discontinuance.¹⁶³ The application shall identify that the provider is an interconnected VoIP provider with respect to the service to be discontinued and shall include, in addition to the information set forth in the notice provided to affected customers, a caption, a brief description of the dates and methods of notice to all affected customers, and any other information the Commission may require. The *Order* also requires an interconnected VoIP provider to submit a copy of its application to the public utility commission and to the Governor of the State(s) in which it proposes to discontinue, reduce, or impair service, as well as to the Secretary of Defense.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

51. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹⁶⁴

52. The *IP-Enabled Services Notice* sought comment on whether to extend consumer protections afforded in the Act to subscribers of VoIP or other IP-enabled services, and invited comment on the effect on small entities.¹⁶⁵ We must assess the interests of small businesses in light of the overriding public interest in protecting consumers from interrupted voice service and its associated consequences.

53. In the *Order*, the Commission found that allowing customers of interconnected VoIP services to receive the benefits of section 214 discontinuance procedures is fundamentally important for the protection of consumers.¹⁶⁶ Specifically, the Commission found that extending section 214 discontinuance procedures to interconnected VoIP service customers is necessary to protect consumers from abrupt and unexpected telecommunications service interruptions.¹⁶⁷ As the Commission stated, even customers with competitive alternatives need fair notice and information to choose a substitute service.¹⁶⁸ The Commission thus found that notice of proposed service discontinuances is important for the protection of all customers of interconnected VoIP providers, including those of small businesses.¹⁶⁹ In considering whether to impose section 214 service discontinuance obligations on interconnected VoIP providers, the Commission considered several alternatives, including imposing streamlined obligations for dominant and non-dominant carriers and separate notice provisions. The Commission concluded that imposing the minimal streamlined obligations for non-dominant carriers on interconnected VoIP

¹⁶³ See *id.* at para. 17.

¹⁶⁴ 5 U.S.C. § 603(c).

¹⁶⁵ See *IP-Enabled Services Notice*, 19 FCC Rcd at 4910-11, paras. 71-72.

¹⁶⁶ See *Order*, *supra* paras. 14-15.

¹⁶⁷ See *id.* at para. 14.

¹⁶⁸ See *id.*

¹⁶⁹ See *id.* at note 52.

providers was appropriate, striking a good balance between the Commission's dual objectives of permitting ease of exit from competitive markets and ensuring that the public will be given a reasonable period of time to make other service arrangements. The Commission further concluded that given that these same minimal requirements were imposed on non-dominant carrier small entities and did not result in any hardship, imposing these requirements on all interconnected VoIP providers, including providers that may be small entities, would be appropriate.¹⁷⁰

54. **Report to Congress:** The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.¹⁷¹ A copy of the Order and FRFA (or summaries thereof) will also be published in the Federal Register.¹⁷²

¹⁷⁰ *See id.*

¹⁷¹ *See* 5 U.S.C. § 801(a)(1)(A).

¹⁷² *See* 5 U.S.C. § 604(b).

**STATEMENT OF
ACTING CHAIRMAN MICHAEL J. COPPS**

Re: *IP-Enabled Services*, WC Docket No. 04-36

Over the past several years, we have seen widespread adoption by the American public of dynamic new telecommunications technologies and services, and we are going to see even more dramatic deployments in the new age of broadband. We welcome, we encourage, this growth. As change occurs, however, we have the continuing obligation always to protect consumers. We discharge that obligation in this item and smooth the way when IP voice services replace traditional voice services.

Today's Order applies the same discontinuance, reduction and impairment of service requirements to interconnected Voice over Internet Protocol (VoIP) providers that we currently apply to non-dominant carriers. The Order requires interconnected VoIP providers to notify customers in a reasonable amount of time so that consumers don't find themselves left unexpectedly without voice service—a service that we have all come to expect and rely on. In addition, interconnected VoIP providers are required to notify officials in states where service is offered of any impending loss of service to those communities. These requirements do not strike me as burdensome, and in helping consumers and states along, I believe they serve the public interest.

Thanks to the Bureau for its forward-looking work on this and to my colleagues for agreeing once again to put consumers first.

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: *IP-Enabled Services*, WC Docket No. 04-36

Today we take an overdue step to further protect users of interconnected Voice over Internet Protocol (VoIP) services. I support this Order because it reaffirms the Commission's commitment to consumer protection and public safety as consumers continue to migrate to new and innovative technologies like VoIP. Interconnected VoIP users will no longer be subject to abrupt discontinuance of service as carriers will now be required to give them sufficient notice before discontinuing, reducing, or impairing service. The bottom line is that interconnected VoIP users will now enjoy the same protection as users of traditional telephone service.

This is good news for the millions of Americans who subscribe to interconnected VoIP services. We already have extended disabilities access and privacy requirements to interconnected VoIP. As we have recognized for a while now, these users expect the same protection as users of traditional telephone technologies. This is critical since we expect that more people will switch to VoIP, especially as we push broadband availability throughout the country.

Today's action is not merely about consumers' convenience. It is a serious public safety matter. If a subscriber does not receive sufficient warning that their interconnected VoIP provider will cut off service, that consumer could well be left without telephone – and 911 – service. The Commission should have given consumers these protections years ago, as we have seen interconnected VoIP service providers go out of business and strand consumers.

Today is also a victory for competition. By giving interconnected VoIP users the same protections as users of traditional telephone, we further position this exciting technology as a direct competitor against more established services.

I want to thank Chairman Copps for bringing attention to this and the other consumer-protection actions that we take today. This is government at its best, taking concrete steps to protect citizens' safety and well-being.

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL**

Re: *IP-Enabled Services*, WC Docket No. 04-36

I am pleased to support today's order. Consumers increasingly are finding that interconnected VoIP services are a substitute for traditional telephone service. In some instances, interconnected VoIP service providers exited markets or went out of business altogether and did not notify their customers beforehand. Consumers only knew something was awry once they lost dial tone. Today's order allows consumers of interconnected VoIP service to receive the same courtesy of a notice of discontinuance of service as a consumer of any other type of phone service. Such notice gives customers a reasonable opportunity to switch providers, and is consistent with our previous actions to ensure parity regarding obligations for E911, universal service, customer proprietary network information protections, disability access, and local number portability.

Many thanks to Acting Chairman Copps for bringing this order forward and to the Bureau staff for their work on this matter.